

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 DOMINIC HARDIE,

11 Plaintiff,

12 v.
13

14
15 THE NATIONAL COLLEGIATE
16 ATHLETIC ASSOCIATION, a
17 nonprofit association, et al.,

18 Defendants.

CASE NO. 3:13-cv-0346-GPC-DHB

ORDER:

**(1) GRANTING PLAINTIFF'S
UNOPPOSED MOTION TO
AMEND COMPLAINT;**

(2) VACATING HEARING DATE

[ECF No. 117]

19 Before the Court is Plaintiff Dominic Hardie's ("Plaintiff") Unopposed Motion
20 to Amend. (ECF No. 117.) Defendant National Collegiate Athletic Association (the
21 "NCAA") filed a statement of nonopposition to Plaintiff's motion. (ECF No. 123.)
22 Plaintiff wishes to correct a single misrepresentation regarding his criminal conviction,
23 clarifying that he pled guilty only to "possession" and not "possession with intent to
24 distribute." (ECF No. 117-1, at 1.) Plaintiff claims that he only recently became aware
25 of the misrepresentation. (*Id.* at 1–2.)

26 Under Federal Rule of Civil Procedure 15(a), leave to amend a complaint after
27 a responsive pleading has been filed may be allowed by leave of the court and "shall
28 freely be given when justice so requires." *Foman v. Davis*, 371 U.S. 178, 182 (1962);

1 FED. R. CIV. P. 15(a). Granting leave to amend rests in the sound discretion of the trial
 2 court. *Int'l Ass'n of Machinists & Aerospace Workers v. Republic Airlines*, 761 F.2d
 3 1386, 1390 (9th Cir. 1985). This discretion must be guided by the strong federal policy
 4 favoring the disposition of cases on the merits and permitting amendments with
 5 "extreme liberality." *DCD Programs Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir.
 6 1987). "This liberality in granting leave to amend is not dependent on whether the
 7 amendment will add causes of action or parties." *Id.*; *contra Union Pac. R.R. Co. v.*
 8 *Nev. Power Co.*, 950 F.2d 1429, 1432 (9th Cir. 1991).

9 Because Rule 15(a) favors a liberal policy, the nonmoving party bears the burden
 10 of demonstrating why leave to amend should not be granted. *Genentech, Inc. v. Abbott*
 11 *Labs.*, 127 F.R.D. 529, 530–31 (N.D. Cal. 1989). In assessing the propriety of
 12 amendment, courts consider several factors: (1) undue delay; (2) bad faith or dilatory
 13 motive; (3) repeated failure to cure deficiencies by amendments previously permitted;
 14 (4) prejudice to the opposing party; and (5) futility of amendment. *Foman*, 371 U.S. at
 15 182; *United States v. Corinthian Colls.*, 655 F.3d 984, 995 (9th Cir. 2011).

16 The Court finds that all of the *Foman* factors weigh in Plaintiff's favor and thus
 17 GRANTS Plaintiff's motion to amend. First, Plaintiff has not delayed, bringing this
 18 motion soon after he became aware of the error. Second, Plaintiff is not acting in bad
 19 faith and merely wishes to correct a misrepresentation. Third, Plaintiff has not
 20 repeatedly failed to cure deficiencies as this is the first time he seeks to amend the
 21 complaint. Fourth, the NCAA would suffer no prejudice as Plaintiff's amendment only
 22 changes one alleged fact. Fifth, Plaintiff's amendment would not be futile as he is only
 23 correcting a misrepresentation.

24 For the reasons stated above, **IT IS HEREBY ORDERED** that:

- 25 1. Plaintiff's Motion to Amend, (ECF No. 117), is **GRANTED**;
- 26 2. Plaintiff is directed to file his First Amended Complaint currently
 27 proposed at ECF No. 117-3; and

28 //

1 3. The hearing set for December 12, 2014, is **VACATED**.

2 DATED: December 4, 2014

3
4 
5 HON. GONZALO P. CURIEL
6 United States District Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28